

AN ACT

ENTITLED, An Act to define medical indigence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 28-13-1.1 be amended to read as follows:

28-13-1.1. For the purposes of this chapter, an indigent or poor person is any person who does not have sufficient money, credit, or property to be self-supporting; who has no one to look to who is legally required to provide support; or who is unable to be self-supporting through work because of illness or injury. In applying this definition, each county shall establish reasonable eligibility standards for county poor relief.

Section 2. That § 28-13-16 be amended to read as follows:

28-13-16. The county commissioners in each county are responsible for the care and relief of all poor persons in the county as provided by this chapter as long as those persons remain eligible. The commissioners may designate a county official to assist in the coordination of poor relief information with other counties.

Section 3. That § 28-13-27 be amended to read as follows:

28-13-27. Terms used in this chapter mean:

- (1) "Actual cost of hospitalization," the actual cost to a hospital of providing hospital services to a medically indigent person, determined by applying the ratios of costs to charges appearing on the statement of costs required in § 28-13-28 to charges at the hospital in effect at the time the hospital services are provided;
- (2) "Emergency hospital services," treatment in the most appropriate hospital available to meet the emergency need. The physician, physician assistant, or nurse practitioner on duty or on call at the hospital must determine whether the individual requires emergency hospital care. The need for emergency hospital care is established if the absence of emergency care is expected to result in death, additional serious jeopardy to the individual's health, serious

impairment to the individual's bodily functions, or serious dysfunction of any bodily organ or part. The term does not include care for which treatment is available and routinely provided in a clinic or physician's office;

- (3) "Hospital," any hospital licensed as such by the state in which it is located;
- (4) "Household," the patient, minor children of the patient living with the patient, and anyone else living with the patient to whom the patient has the legal right to look for support;
- (5) "Nonemergency care," hospitalization which is medically necessary and recommended by a physician licensed under chapter 36-4 but does not require immediate care or attention;
- (6) "Indigent by design," an individual who meets any one of the following criteria:
  - (a) Is able to work but has chosen not to work;
  - (b) Is a student at a postsecondary institution who has chosen not to purchase health insurance;
  - (c) Has failed to purchase health insurance which was made available through the individual's employer; or
  - (d) Has transferred resources for purposes of establishing eligibility for medical assistance available under the provisions of this chapter. The lookback period for making this determination includes the thirty-six month period immediately prior to the onset of the individual's illness and continues through the period of time for which the individual is requesting services.

Section 4. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A medically indigent person is one who meets the following criteria:

- (1) Requires medically necessary hospital services for which no public or private third-party coverage, such as insurance, veterans' assistance, medicaid, or medicare, is available which covers the actual cost of hospitalization;

- (2) Has no ability or only limited ability, as determined under the provisions of this chapter, to pay a debt for hospitalization;
- (3) Has not voluntarily reduced or eliminated ownership or control of an asset for the purpose of establishing eligibility;
- (4) Is not indigent by design; and
- (5) Is not a veteran or a member of a Native American tribe who is eligible or would have been eligible for services through the Veterans' Administration or the Indian Health Service if the services had been applied for within seventy-two hours of the person's admission.

Section 5. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

Medically necessary hospital services are services provided in a hospital which meet the following criteria:

- (1) Are consistent with the person's symptoms, diagnosis, condition, or injury;
- (2) Are recognized as the prevailing standard and are consistent with generally accepted professional medical standards of the provider's peer group;
- (3) Are provided in response to a life-threatening condition; to treat pain, injury, illness, or infection; to treat a condition which would result in physical or mental disability; or to achieve a level of physical or mental function consistent with prevailing standards for the diagnosis or condition;
- (4) Are not furnished primarily for the convenience of the person or the provider; and
- (5) There is no other equally effective course of treatment available or suitable for the person needing the services which is more conservative or substantially less costly.

A county shall rely on the attending physician's determination as to medical necessity of hospital services unless evidence exists to the contrary.

Section 6. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as

follows:

Except for the costs of emergency hospital services, a county may adopt guidelines which define the amount, scope, and duration of medical and remedial services available to eligible persons and the basis for and extent of payments made to providers by counties on behalf of eligible persons.

Section 7. That § 28-13-28 be amended to read as follows:

28-13-28. A hospital may avail itself of the provisions of this chapter for purposes of determining payment for hospitalization of a medically indigent person only if the hospital has filed a detailed statement of costs with the secretary of social services in the form prescribed by the secretary. The statement of costs shall compute and set forth the ratios of costs to charges for the hospital's fiscal year covered by the statement of costs. The statement of costs shall be filed with the secretary at least annually, unless such period is extended or otherwise provided by the secretary, but a hospital may file a detailed statement of costs or amendments to such a statement once every six months.

Section 8. That § 28-13-29 be amended to read as follows:

28-13-29. The amount of reimbursement for hospital services is the amount calculated pursuant to section 16 of this Act. It may not exceed the actual cost of hospitalization as defined in subdivision 28-13-27(1) or an amount established by the secretary of the Department of Social Services, whichever is less. The amount established by the secretary shall be based on medicaid payment methodology. A hospital may not maintain a claim against a county for any amount which exceeds the usual ordinary and reasonable charge for any hospital service, even if the charge is less than the hospital's actual cost of hospitalization. If the hospital furnishes hospital services to medically indigent persons residing in the county in which the hospital is located at rates less than the rates provided for in this section, the hospital shall furnish such hospital services to all medically indigent persons at the same rates.

Section 9. That § 28-13-32.3 be amended to read as follows:

28-13-32.3. To receive assistance under this chapter for the costs of hospitalization, a person

must be medically indigent as defined in section 4 of this Act. The person or someone acting on behalf of the person shall apply to the person's county of residence for assistance.

Section 10. That § 28-13-32.4 be amended to read as follows:

28-13-32.4. An application made by a hospital on behalf of a medically indigent person pursuant to § 28-13-32.3 shall be submitted to the county auditor within one year of the discharge of the indigent. The application shall include:

- (1) The notice of hospitalization as provided in § 28-13-34.1;
- (2) The dates of hospitalization;
- (3) The final diagnosis;
- (4) The cost of hospital services; and
- (5) Any financial information in the possession of the hospital concerning the patient or the responsible party, including the availability of insurance coverage.

The county may not require the hospital to provide more information concerning such a medically indigent person than is contained in the application provided for in this section and the release of information provided for in section 26 of this Act.

Section 11. That § 28-13-33 be amended to read as follows:

28-13-33. Subject to the provisions of this chapter and except as expressly provided, if a hospital furnishes emergency hospital services to a medically indigent person, the county where the medically indigent person has established residency is liable to the hospital for the reimbursement of the hospitalization. In the case of nonemergency care, the county of residence is liable only to the extent that the board of county commissioners, in good faith, approves an application for assistance. If a county provides payment for nonemergency services, the services shall be approved by the county before the services are provided. To the extent that the county provides payment to a hospital, the county has the same remedies for the recovery of the expense as are provided by chapter 28-14 for the recovery of money expended for the relief and support of poor and indigent persons.

Section 12. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of determining medical indigence, the county shall establish an annual income guideline for the person which is derived as follows:

- (1) Using the housing index established in section 13 of this Act, determine the housing index for the person's county of residence. Multiply the county index by three hundred six dollars, the median gross rent of residences in South Dakota in 1996;
- (2) Using the federal poverty guidelines established in 43 Federal Register 8,286 (March 4, 1996), determine the federal poverty level for the household size and multiply that figure by one hundred seventy-five percent; and
- (3) Add the results of subdivisions (1) and (2) of this section and multiply by twelve.

Section 13. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

The housing index for each county is as follows:

COUNTY	HOUSING INDEX
Aurora	0.65
Beadle	0.91
Bennett	0.86
Bon Homme	0.71
Brookings	0.96
Brown	0.95
Brule	0.80
Buffalo	0.77
Butte	0.91
Campbell	0.74
Charles Mix	0.65

Clark	0.72
Clay	0.95
Codington	0.92
Corson	0.47
Custer	1.03
Davison	0.90
Day	0.78
Deuel	0.79
Dewey	0.89
Douglas	0.69
Edmunds	0.71
Fall River	0.89
Faulk	0.66
Grant	0.81
Gregory	0.68
Haakon	0.80
Hamlin	0.70
Hand	0.70
Hanson	0.96
Harding	0.70
Hughes	1.03
Hutchinson	0.72
Hyde	0.75
Jackson	0.84
Jerauld	0.61
Jones	0.76
Kingsbury	0.67
Lake	0.78
Lawrence	1.00

Lincoln	0.93
Lyman	0.77
Marshall	0.72
McCook	0.73
McPherson	0.58
Meade	1.03
Mellette	0.74
Miner	0.65
Minnehaha	1.23
Moody	0.79
Pennington	1.26
Perkins	0.65
Potter	0.86
Roberts	0.70
Sanborn	0.67
Shannon	0.81
Spink	0.82
Stanley	1.06
Sully	0.82
Todd	0.79
Tripp	0.83
Turner	0.78
Union	0.87
Walworth	0.97
Yankton	0.93
Ziebach	0.82

Section 14. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of determining a household's income, the county shall consider all sources of income, including the following:

- (1) Compensation paid to household members for personal services, whether designated as gross salary, wages, commissions, bonus, or otherwise;
- (2) Net income from self-employment, including profit or loss from a business, farm, or profession;
- (3) Income from seasonal employment;
- (4) Periodic payments from pensions or retirement programs, including social security, veterans' benefits, disability payments, and insurance contracts;
- (5) Income from annuities or trusts, except for a trust held by a third party for the benefit of the minor children of the household;
- (6) Interest, dividends, rents, royalties, or other gain derived from investments or capital assets;
- (7) Gain or loss from the sale, trade, or conversion of capital assets;
- (8) Unemployment insurance benefits and strike benefits;
- (9) Workers' compensation benefits and settlements;
- (10) Alimony and child support payments received; and
- (11) School grants and stipends which are used for food, clothing, and housing but not for books and tuition.

A federal income tax return is the preferred source for determining earnings. If a federal income tax return is not representative of current earnings, the county may also require pay stubs which include gross and net earnings.

Section 15. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of determining a household's resources, the county shall consider all resources,

including:

- (1) Equity value of the household's primary residence, excluding the homestead exemption provided for in subdivision (2) of § 43-45-3;
- (2) Equity value of other real property;
- (3) Equity value of major recreational and other leisure equipment including watercraft, campers, recreational vehicles, all-terrain vehicles, and snowmobiles;
- (4) Equity value, in excess of five thousand dollars, of all motor vehicles;
- (5) Personal assets, including cash in excess of one-half month's income, stocks, securities, accounts and notes due the person or the person's household, cash values of life insurance policies, collectible judicial judgments in favor of the person or the person's household, and monetary gifts;
- (6) Equity value of business property, including real estate, equipment, and inventory; and
- (7) Equity value of household goods and personal property beyond that which is reasonably essential for everyday living and self-support.

Equity value is determined by subtracting an asset's outstanding indebtedness from its fair market value.

The county shall subtract five thousand dollars from the total of the household's countable resources to determine the household's adjusted resources.

Section 16. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A county is financially responsible only for the hospitalization expense which is beyond the person's ability to pay. A person's ability to pay is determined according to the following:

- (1) Determine the household's contributions for taxes, social security, medicare, and payments to other standard retirement programs. A household's contribution for taxes is limited to the amount of taxes payable for the actual number of dependents in the household;

- (2) Determine the household's expenses, including actual rent paid or scheduled principal and interest payments for a personal residence plus property taxes and homeowner's insurance costs; all utilities; child care expenses related to work schedules; grocery expenses up to the maximum allowed under the Food Stamp Program's Thrifty Food Plan as specified in 60 Federal Register 2,733 (January 11, 1995), plus household supplies and toiletries; basic auto expenses, gasoline, and upkeep; employee-paid health, life, and auto insurance payments; installment payments for medical bills; recurring expenses for medicine and medical care; court-ordered child support and alimony paid; automobile installment payments for one vehicle; clothing, reasonable in relation to the household's income; and installment payments, limited to necessary household items required by the household to maintain the needs of everyday living and reasonable in relation to the household's income;
- (3) Determine the amount of a household's discretionary income by subtracting the sum of the household's contributions and expenses from the household's income determined according to section 14 of this Act. Divide the amount of the household's discretionary income in half and multiply the resulting amount by forty-four dollars and ninety-six cents. The result added to the household's adjusted resources determined according to section 15 of this Act equals the household's ability to pay the debt and constitutes the household's share of the hospital bill. The amount of forty-four dollars and ninety-six cents represents the amount of medical or hospital expenses which can be amortized over sixty months at twelve percent annual interest per dollar of payment.

The amount of the county's obligation is determined by subtracting the amount of the household's ability to pay from the hospital charges computed according to § 28-13-29. If the household defaults on the payment of its share of the hospital bill, a hospital may not pursue a collection action against the county for the defaulted payment.

Section 17. That § 28-13-34.1 be amended to read as follows:

28-13-34.1. If hospitalization is furnished to a medically indigent person, the county is not liable for the cost of the hospitalization unless, within fifteen days in the case of an emergency admission, notice of the hospitalization is mailed to the auditor of the county. The notice shall contain:

- (1) The name and last known address of the patient or the patient's guardian;
- (2) The name and address of the responsible party, if known;
- (3) The name of the attending physician;
- (4) The nature and degree of severity of the illness;
- (5) The anticipated diagnostic or therapeutic services required;
- (6) The location at which the services are to be provided;
- (7) The estimated reimbursement for the services; and
- (8) A statement that the hospital has asked the patient or the responsible party, if known, whether the patient has served in any branch of the military, is potentially eligible for Indian Health Service benefits, or is a member of a Native American tribe and a statement of the information received in response to the inquiry.

Section 18. That § 28-13-35 be amended to read as follows:

28-13-35. In any case of hospitalization of a medically indigent person, the county, through any elected officer or through an employee, may arrange for adequate and suitable care of the person elsewhere. If the county notifies the hospital in writing of its arrangement for the removal of the medically indigent person and the hospital unreasonably fails or refuses to cooperate in effecting the change, the county is not liable for any hospitalization subsequent to the hospital's failure or refusal to cooperate.

Section 19. That § 28-13-36 be amended to read as follows:

28-13-36. Nothing in this chapter precludes a hospital and a county from entering into a reasonable and suitable arrangement, contract, or agreement for hospitalization of medically indigent persons at other rates than provided under this chapter, or abrogates or impairs any rights or remedies

of either the county or the hospital under any such arrangement, contract, or agreement.

Section 20. That § 28-13-38.1 be amended to read as follows:

28-13-38.1. Hospitals located outside South Dakota are eligible for reimbursement from the county where the medically indigent person has established residency only if the hospital provides services which are not available in South Dakota or the hospital is approved by the county of residence of the medically indigent person as providing a reasonable or cost-effective service.

Section 21. That § 28-13-44 be amended to read as follows:

28-13-44. The fact that an individual has filed a petition in bankruptcy or has received a discharge in bankruptcy under Title 11 of the United States Code is not admissible evidence in a proceeding under this chapter and may not be considered in making a determination of indigency.

Section 22. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If an individual is indigent by design, the individual is ineligible for medical assistance under the provisions of this chapter and there may be no other criteria used to determine eligibility.

Section 23. That § 28-13-30 be amended to read as follows:

28-13-30. The secretary of social services shall make such investigation as necessary, and shall approve the statement of costs only if the statement is accurate, complete and reliable as could reasonably be expected, and that it discloses, as nearly as may be reasonably determined, the ratios of costs to charges for the hospital's fiscal year covered by the statement of costs. In granting approval, the secretary may modify any items in the statement which require such modification and shall provide written notice of any such modification to the respective hospital.

Section 24. That § 28-13-31 be amended to read as follows:

28-13-31. No statement of costs, or amendment thereto, may take effect until approved by the secretary of social services and the expiration of thirty days from the filing thereof, and thereafter, for purposes of this chapter, shall remain in full force and effect until the next statement of costs, or

amendment thereto, filed by the hospital pursuant to § 28-13-28 is approved by the secretary. Any such statement of costs, or amendments thereto, shall be a public record and be available for inspection at any time in behalf of any board of county commissioners.

Section 25. That § 28-13-32 be amended to read as follows:

28-13-32. Any board of county commissioners may at any time file, with the secretary of social services and the hospital concerned, objections in writing to any such statement of costs, any items therein, or amended thereto, which objections shall be passed upon by the secretary.

Section 26. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If submitting a notice under the provisions of § 28-13-34.1, the hospital shall make every reasonable effort to secure from the patient, and to include with the notice, a release of information form which has been signed by the patient or the patient's authorized representative. The form shall authorize persons, agencies, or institutions to release, to the county, the patient's social security number, the social security number of other household members, medical information concerning the patient, and financial information concerning the patient or members of the patient's household.

Section 27. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

A county may review the need for emergency room treatment, an admission, a transfer, a continued stay, or inpatient surgical services. At its option, a county may request the Department of Social Services to provide the needed reviews on the county's behalf. In either case, the review shall be conducted by or under the supervision of a physician licensed under chapter 36-4, and shall be consistent with generally accepted medical practice guidelines.

Section 28. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

No county is liable for the payment of any experimental procedures or experimental modes of treatment provided on behalf of a medically indigent person.

Section 29. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding § 7-8-30, in any appeal regarding medical indigence, the circuit court may affirm or remand for further proceedings, or the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the county's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the county;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Clearly unwarranted exercise of discretion.

Section 30. That chapter 28-13 be amended by adding thereto a NEW SECTION to read as follows:

If submitting a bill to a county for medically necessary hospital services provided on behalf of a person who is medically indigent, the hospital must first demonstrate that it has exhausted all avenues of payment including accepting reasonable monthly payments from the person who does not have the ability to pay the hospital in one lump sum at the time of discharge.

An Act to define medical indigence.

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I certify that the attached Act  
originated in the

SENATE as Bill No. 121

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 121

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 19\_\_

\_\_\_\_\_  
Governor  
=====

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State